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RECORDATION NO. 9058 Filed & Recorded

OCT 31 1977-10 50 AM

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OCT 31 1977-10 20 AM  
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INTERSTATE COMMERCE COMMISSION

INTERSTATE COMMERCE COMMISSION October 24, 1977

Interstate Commerce Commission  
Office of the Secretary  
Recording Section  
Washington, D. C. 20423

RECORDATION NO. 9058 Filed & Recorded

OCT 31 1977-10 50 AM  
OCT 31 1977  
see \$ 110

Attn: Mrs. Lydia Wright

INTERSTATE COMMERCE COMMISSION

ICC Washington, D. C.

Re: Emons Leasing Co., Inc. and  
The Chase Manhattan Bank, N.A.

Dear Mrs. Wright:

We are enclosing herewith three (3) executed copies of each of the following:

1. Chattel Mortgage and Security Agreement from Emons Leasing Co., Inc. to The Chase Manhattan Bank, N.A., dated October 21, 1977.

2. Lease of Railroad Equipment dated October 7, 1977, between Emons Leasing Co., Inc., as Lessor, and the Maryland and Pennsylvania Railroad Company, as Lessee.

3. Agreement and Assignment between Emons Leasing Co., Inc. and The Chase Manhattan Bank, N.A., assigning to The Chase Manhattan Bank the above described lease of railroad equipment.

Would you be good enough to cause the enclosures to be recorded, returning to this office your usual stamped received copy and receipt.

We are enclosing herewith a check to the order of the Interstate Commerce Commission in the amount of \$110.00.

Very truly yours,

Melvin S. Slade

MSS/db  
Encls.

cc: Jeffrey Biever  
Robert Grossman

OCT 31 1977 10 12 AM

LEASE OF RAILROAD EQUIPMENT

INTERSTATE COMMERCE COMMISSION

THIS AGREEMENT, entered into as of the 7th day of October, 1977, by and between Emons Leasing Co., Inc., whose address is 490 East Market St., York, Pa. 17403, (hereinafter referred to as "Lessor"), and MARYLAND AND PENNSYLVANIA RAILROAD COMPANY, a Pennsylvania and Maryland corporation, whose address is 490 East Market Street, York, Pennsylvania 17403, (hereinafter referred to as "Lessee"), WITNESSETH:

R E C I T A L S:

The parties hereto have reached an understanding with respect to Lessor leasing to Lessee certain railroad box cars (hereinafter referred to as the "Cars") owned by Lessor, and desire to set forth in writing their agreement with respect thereto.

NOW, THEREFORE, in consideration of the premises, the parties hereto agree:

1. Lease and Hire: Lessor hereby lets to Lessee and Lessee hereby hires from Lessor the following designated and described Cars:

One hundred (100) rebuilt, fifty foot, wood-lined, general purpose boxcars, class "XM". The cars are numbered consecutively as follows:

MPA 7200 - 7299, inclusive.

2. Rental Payments: The Lessee hereby covenants and agrees to pay, or cause to be paid to the Lessor and its successors and assigns, or at such bank or trust company as Lessor shall specify, as rent for said Cars subject to this lease during the term hereof, the following:

One hundred and eight (108) monthly payments of \$40,556.00 each with the first payment beginning one month from the date of this lease.

12/10/8  
106

3. Net Lease: This Lease is a net lease and it is contemplated that it may be assigned as collateral to a bank or other financial institution. The Lessee shall not be entitled as against the Lessor or any assignee of Lessor, or any successor assignee, to any abatement of rent, reduction thereof or setoff against rent, including, but not limited to, abatements, reductions or setoffs due or alleged to be due by reason of any past, present or future claims of the Lessee against the Lessor or any of such assignees under this Lease; nor, except as otherwise expressly provided herein, shall this Lease terminate, or the respective obligations of the Lessor or any of such assignees or the Lessee be otherwise affected, by reason of any defect in or damage to or loss of possession or loss of use or destruction of all or any of the Cars from whatsoever cause, any liens, encumbrances or rights of others with respect to any of the Cars, the prohibition of or other restriction against the Lessee's use of all or any of the Cars, the interference with such use by any person or entity, the invalidity or unenforceability or lack of due authorization of this Lease, any insolvency, bankruptcy, reorganization or similar proceeding against the Lessee, or for any other cause whether similar or dissimilar to the foregoing, any present or future law to the contrary notwithstanding, it being the intention of the parties hereto that the rents and other amounts payable by the Lessee hereunder shall continue to be payable in all events in the manner and at the times herein provided unless the obligation to pay the same shall be terminated pursuant to the express provisions of this Lease.

To the extent permitted by applicable law, the Lessee hereby waives any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate, cancel, quit or surrender the lease of any of the Cars, except in accordance with the express terms hereof. Each rental or other payment made by the Lessee here-

under shall be final and the Lessee shall not seek to recover all or any part of such payment from the Lessor or any assignee of Lessor's interest in the Lease for any reason whatsoever.

4. Term of Lease: The term of this Lease as to each Car shall begin on the date of the delivery to and acceptance by the Lessee of such Car and, subject to the provisions of Articles 8, 14 and 17 hereof, shall terminate on the date on which the final payment of rent in respect thereof is due hereunder.

5. Taxes: All payments to be made by the Lessee hereunder will be free of expense to the Lessor for collection or other charges and will be free of expense to the Lessor with respect to the amount of any local, state, federal, or foreign taxes other than (a) any United States federal income tax, and (b) the aggregate of all state, city or local income taxes or franchise taxes measured by net income based on such receipts, up to the amount of any such taxes which would be payable to the state, city and locality in which the Lessor has its principal place of business without apportionment to any other state, except any such tax which is in substitution for or relieves the Lessee from the payment of taxes which it would otherwise be obligated to pay or reimburse as herein provided or license fees, assessments, charges, fines or penalties (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions) hereafter levied or imposed upon or in connection with or measured by this Lease or any sale, rental, use, payment, shipment, delivery or transfer of title under the terms hereof, all of which impositions the Lessee assumes and agrees to pay on demand in addition to the payments to be made by it provided for herein.

The Lessee will also pay promptly all impositions which may be imposed upon any Car or for the use or operation thereof or upon the earnings arising therefrom (except as provided above) or upon the Lessor solely by reason of its ownership thereof and will keep at all times all and every part of such Car free and clear of all impositions which might in any way affect the title of the Lessor or result in a lien upon any such Car; provided, however, that the Lessee shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions and the nonpayment thereof does not, in the opinion of the Lessor, adversely affect the title, property

or rights of the Lessor hereunder. If any impositions shall have been charged or levied against the Lessor directly and paid by the Lessor, the Lessee shall reimburse the Lessor on presentation of an invoice therefor.

In the event any reports with respect to impositions are required to be made, the Lessee will either make such reports in such manner as to show the interests of the Lessor in such Cars or notify the Lessor of such requirements and make such reports in such manner as shall be satisfactory to the Lessor.

In the event that, during the continuance of this Lease, the Lessee becomes liable for the payment or reimbursement of any imposition, pursuant to this Article 5, such liability shall continue, notwithstanding the expiration of this Lease, until all such impositions are paid or reimbursed by the Lessee.

6. Annual Reports: On or before April 30 in each year, commencing with the calendar year which begins after the expiration of 90 days from the date of this Lease, the Lessee will furnish to the Lessor an accurate statement (a) setting forth as at the preceding December 31 the amount, description and numbers of all Cars then leased hereunder, the amount, description and numbers of all Cars that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Lease in the case of the first such statement) and such other information regarding the condition and state of repair of the Cars as the Lessor may reasonably request and (b) stating that, in the case of all Cars repainted or repaired during the period covered by such statement, the numbers and the markings required by Article 7 hereof have been preserved or replaced. The Lessor shall have the right by its agents, to inspect the Cars and the Lessee's records with respect thereto at such reasonable times as the Lessor may request during the continuance of this Lease.

7. Identification Marks: The Lessee will cause each Car to be kept numbered with its identifying number.

The Lessee will not change the identifying number of any Car except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Lessor and filed, recorded and deposited by the Lessee in all public offices where this Lease shall have been filed, recorded and deposited.

The Lessee may allow the Cars to be lettered with the names or initials or other insignia customarily used by the Lessee or its affiliates on railroad equipment used by them of the same or a similar type for convenience of identification of their rights to use the Cars as permitted under this Lease.

8. Lost, Destroyed or Damaged Cars: In the event that any Car shall be worn out, lost, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever (such occurrences being hereinafter called a "Casualty Occurrence") during the term of this Lease, the Lessee shall, within 30 days after it shall have been determined that such unit has suffered a Casualty Occurrence, fully inform the Lessor in regard thereto. Lessee shall pay, within 30 days of such event, to the Lessor a sum equal to the fair value of all Cars having suffered a Casualty Occurrence in the preceding month.

For all purposes of this Article 8 the value of any Car suffering a Casualty Occurrence shall be as determined by and computed from the annexed exhibit A entitled "Schedule of Loss and Termination Values" for the period elapsed since the date of the delivery and acceptance of such Car to the date of the Casualty Occurrence in respect thereof.

Any money paid to or received by the Lessor pursuant to this Article 8 shall, so long as none of the events of default specified in Article 14 hereof shall have occurred and be continuing, be applied, in whole or in part, as the Lessee may direct in a written instrument filed with the Lessor, to prepay Rental Payment required by Section 2 hereof or to or toward the cost of a railroad box car to replace such Car having suffered a Casualty Occurrence, as the Lessee may direct in such written instrument. In case any such money shall be applied to payments of rent hereunder thereafter falling due in the inverse order of their payment dates (but without premium and whether or not such amount shall be sufficient to prepay one or more entire installments). In case of replacement the amount to be paid by the Lessor in respect of any replacing Car shall not exceed the lesser of the cost of such Car or the amount which such Car would have cost if acquired on the earliest date when any of such money was paid to the Lessor and the Lessee shall pay any additional cost of such unit. The amount which any such replacing Car would have cost if acquired on the earliest date when any of such money was paid to the Lessor and the applicable rate of depreciation on the replaced unit shall be conclusively determined by the certificate of the President, a Vice President, the Treasurer, or the Controller or other Chief Accounting Officer of the Lessee.

The Lessee will cause any replacing Car to be marked as provided in Article 7 hereof. Any and all such replacements of Cars shall constitute accessions and shall be subject to all of the terms and conditions of this Lease as though part of the original Cars delivered hereunder and shall be included in the term Cars as used in this Lease. Title to all such replacements shall be free and clear of all liens and encumbrances. The Lessee shall execute, acknowledge, deliver, file and record with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act all such documents and do any and all such acts as may be necessary to cause such replacements to come under and be subject to this Lease.

9. Return of Cars: On termination of this Lease, Lessee will return the Cars to the Lessor at location to be mutually determined or at such other point as Lessor and Lessee may then mutually agree upon; provided, however, that any Car loaded on or before the next to the last day of the Lease term may complete the loaded trip, and return of such Car to Lessor shall be made at the time such Car is released after unloading; and provided further, that each Car shall remain subject to the terms and conditions of this Lease until return thereof.

10. Improvements, Modifications and Alterations: The cost of any improvements, modifications, alterations or additions made to the leased Cars, or Special Devices installed by or at the direction of the Lessee, will be borne by Lessee.

11. Assignment - Use and Possession: Lessee will not assign, transfer, encumber or otherwise dispose of its leasehold interest under this Lease, the Cars or any part thereof, or sublet the Cars or change or permit to be changed or altered the lettering and/or numbering of the Cars, or any of them, without the consent of the Lessor in writing first obtained, except that Lessee may permit the use of the Cars by any subsidiary or affiliated railroad company or on lines of railroad other than Lessee's in the United States, Canada and Mexico in the usual interchange of traffic, but only upon and subject to all the terms and conditions of this Lease. Lessee will not permit any encumbrances or liens, based upon any action or liability of Lessee, to be entered or levied upon any of the Cars.

12. Liability: Lessor shall not be liable for any loss of or damage to anything loaded in or on the Cars and makes no representation as to the suitability of the Cars for use in any particular service. Lessee agrees to indemnify and save harmless Lessor from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and any expenses in connection therewith, including counsel fees, arising out of or as a result of the use and/or operation of the Cars during the term of this Lease, or by reason of any default by Lessee under this Lease.

13. Cleaning and Servicing: Lessee shall indemnify and hold harmless the Lessor from any claims made against Lessor, as Car owner, resulting from any failure to clean and service the Cars before loading

14. Defaults and Remedies: If Lessee shall default in the performance or observance by Lessee, and such default shall continue for 10 days after notice by Lessor to Lessee, or there shall be filed by or against Lessee a petition in bankruptcy or for reorganization under any bankruptcy law, or there shall be a re-

ceiver appointed of any part of Lessee's property or Lessee shall make a general assignment for the benefit of creditors, then and in any such events Lessor, at its election, may terminate this Lease and repossess the Cars, and this Lease shall thereupon become and be terminated, or Lessor may repossess the Cars and relet the same or any part thereof to others for such rent or compensation and upon such terms as it may see fit, and if a sufficient sum shall not be thus realized after repaying all expenses of retaking and reletting the Cars and collecting the rentals thereof to satisfy amounts herein reserved or payable, Lessee agrees to satisfy and pay the deficiency from time to time upon demand. The obligation to pay such deficiency shall survive such termination and/or such retaking of the Cars to the end of the term of this Lease. Lessee shall, without expense to Lessor, assist Lessor in repossessing the Cars and shall for a reasonable time, if required by Lessor, permit storage of such Cars on track-age space owned or leased by Lessee, without cost to Lessor.

15. Obligations Suspended: In the event the performance, in whole or in part, of the obligations (other than for payment of money) of either party under this Lease is hindered, interrupted, or prevented by war, strikes, lockouts, fire, acts of God, or by other similar or different acts of civil or military authorities, or by any cause beyond the reasonable control of the defaulting party, whether similar to the causes herein specified or not, the obligations of such party shall be suspended to the extent of and for the time that performance thereof is prevented or affected by such hindrance, interruption, or prevention, but due diligence shall be observed by such party in resuming performance of its obligations, after removal of the interrupting cause.

16. Purchase Option: Provided that Lessee shall not be in default in the performance or observance of the covenants herein and to be performed or observed by Lessee, Lessee shall have the right, at its option and upon giving sixty days prior written notice to Lessor, to purchase all, but not less than all of the Cars, as-is-where-is, at the end of the term of this lease, upon payment to Lessor at the time of such purchase of an amount in cash equal to \$1.00 per Car so purchased.

17. Early Termination: Provided that Lessee shall not be in default in the performance or observance of the covenants herein and to be performed or observed by Lessee, Lessee shall have the option upon not less than thirty days prior written notice to Lessor, to terminate this lease on any rental installment by paying to Lessor an amount equal to the sum of (X) the Termination Value as determined from the annexed Exhibit A entitled "Schedule



of Loss and Termination Values" and (Y) any unpaid rent due on or before such rental installment date. Upon such payment this lease shall terminate and Lessee thereupon shall become entitled to the Cars as-is-where-is, without recourse and without representation, warranties or agreements of any kind whatsoever, free and clear, however, of any claims, liens and encumbrances arising out of or relating to any action or conduct on the part of the Lessor.

18. Compliance with Laws and Regulations: This Lease is subject to all Federal, State and other laws, rules, regulations and ordinances which may now or hereafter affect, change or modify the terms or conditions hereof or render unlawful the performance of any of its provisions. Lessee shall comply with all governmental laws, regulations and requirements and with the Code of Rules of the Association of American Railroads with respect to the use, maintenance, and operation of such Cars subject to this Lease and will file and record the same with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act.

19. Lessee's Rights: Lessee acknowledges and agrees that it has not obtained, and by the execution hereof it does not obtain, and by payments and performance hereunder it will not obtain, any title to the Cars nor any property right or interest, legal or equitable, therein, except solely as Lessee hereunder. Lessee shall keep the Cars free from any encumbrance or lien which may be equal to or superior to Lessor's rights or which may be a cloud upon or otherwise affect Lessor's title.

20. Prior Understandings: Prior understandings and agreements between the parties with respect to the Cars covered by this Lease are merged herein, and the rights of the parties in respect of such Cars shall be governed by this Lease.

21. Successors and Assigns: Covenants herein shall inure to or bind each party's successors and assigns; provided that notwithstanding the assignment of this Lease by the Lessor, all obligations of the Lessor to the Lessee shall be and remain enforceable by the Lessee, its successors and assigns against the Lessor and not against any assignee or successor assignee of the Lessor's interest in the Lease.

22. Notices: Any notice required or permitted to be given by either party hereto to the other shall be deemed to have been given when deposited in the United States certified mails,

first-class postage prepaid, addressed as follows:

(a) if to the Lessee, at 490 East Market Street,  
York, Pennsylvania 17403; and

(b) if to the Lessor, at 490 East Market Street,  
York, Pa. 17403.

or addressed to either party at such other address as such party shall hereafter furnish to the other party in writing.

23. Severability, Effect and Modifications of Lease: Any provision of this Lease which is prohibited or unenforceable in any jurisdiction shall be, as to such jurisdiction, ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

This Lease exclusively and completely states the rights of the Lessor and the Lessee with respect to the Cars and supercedes all other arrangements, oral or written, with respect to the Cars. No variation or modification of this Lease and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Lessor and the Lessee.

24. Execution: This Lease may be executed in several counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same instrument. Although this Lease is dated October 7, , 1977 for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

25. Law Governing: The terms of this Lease and all rights and obligations hereunder shall be governed by the laws of the State of Pennsylvania, provided, however, that the parties shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act.

IN WITNESS WHEREOF, the parties have duly executed this  
October 7, 1977.

Lease the day and year first above written.

EMONS LEASING CO., INC.

(Lessor)

ATTEST:

By:

Norman Lazarus  
Assistant Secretary

By:

Robert Grossman  
President

MARYLAND AND PENNSYLVANIA RAIL-  
ROAD COMPANY

(Lessee)

ATTEST:

By:

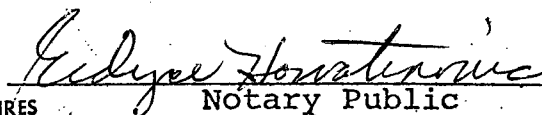
Robert Grossman  
Secretary

By:

Norman Lazarus  
President

STATE OF Pennsylvania )  
: SS.:  
COUNTY OF York )

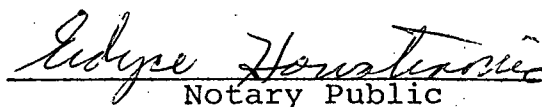
On this 7th day of October, 1977, before me personally appeared Robert Grossman, to me personally known, who, being by me duly sworn, says that he is the President of Emons Leasing Co., Inc. Lessor in the foregoing Lease of Railroad Equipment, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

My Commission expires: MY COMMISSION EXPIRES  
JANUARY 31, 1981  
YORK, YORK COUNTY, PA.

STATE OF Pennsylvania )  
: SS.:  
COUNTY OF York )

On this 7th day of October, 1977, before me personally appeared Herman Lazarus, to me personally known, who, being by me duly sworn, says that he is the President of MARYLAND AND PENNSYLVANIA RAILROAD COMPANY, Lessee in the foregoing Lease of Railroad Equipment, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

  
Notary Public

My Commission expires: MY COMMISSION EXPIRES  
JANUARY 31, 1981  
YORK, YORK COUNTY, PA.

EXHIBIT A

SCHEDULE OF STIPULATED LOSS AND TERMINATION VALUES

<u>Rental Installment Date</u>	<u>Percentage of Cost</u>	<u>Rental Installment Date</u>	<u>Percentage of Cost</u>
1	99.59	51	66.61
2	99.16	52	65.71
3	98.73	53	64.80
4	98.28	54	63.87
5	97.83	55	62.94
6	97.36	56	62.00
7	96.89	57	61.05
8	96.41	58	60.09
9	95.92	59	59.11
10	95.42	60	58.14
11	94.90	61	57.15
12	94.38	62	56.15
13	93.85	63	55.14
14	93.31	64	54.12
15	92.77	65	53.09
16	92.21	66	52.05
17	91.64	67	51.01
18	91.06	68	49.95
19	90.47	69	48.88
20	89.88	70	47.81
21	89.27	71	46.72
22	88.65	72	45.63
23	88.03	73	44.52
24	87.39	74	43.40
25	86.75	75	42.28
26	86.09	76	41.15
27	85.43	77	40.00
28	84.75	78	38.85
29	84.07	79	37.69
30	83.38	80	36.52
31	82.68	81	35.33
32	81.96	82	34.14
33	81.24	83	32.94
34	80.51	84	31.73
35	79.77	85	30.51
36	79.02	86	29.28
37	78.26	87	28.04
38	77.49	88	26.80
39	76.71	89	25.54
40	75.92	90	24.27
41	75.12	91	22.99
42	74.32	92	21.70
43	73.50	93	20.41
44	72.67	94	19.10
45	71.84	95	17.79
46	70.99	96	16.46
47	70.13	97	15.13
48	69.27	98	13.78
49	68.39	99	12.43
50	67.51	100	11.06

EXHIBIT A

SCHEDULE OF STIPULATED LOSS AND TERMINATION VALUES - Page 2.

<u>Rental Installment Date</u>	<u>Percentage of Cost</u>
101	9.69
102	8.31
103	6.91
104	5.51
105	4.10
106	2.68
107	1.25
108	-